

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RODOLFO FERNANDEZ, an Individual;
ANTHONY ALLEN, an Individual,

Plaintiffs,

vs.

PENSKE TRUCK LEASING CO., L.P., a Delaware
limited partnership; PENSKE TRUCK LEASING
CORPORATION, a Delaware corporation;
PENSKE LOGISTICS LLC, a Delaware limited
liability company; DOES 1-50, inclusive; ROE
CORPORATIONS 1-50, inclusive,

Defendants.

Case No. 2:12-cv-00295-JCM-GWF

ORDER

Memorandum of Fees (#60)

This matter comes before the Court on Defendants' Memorandum in Support of Award of Fees and Costs (#60), filed on February 14, 2013.

BACKGROUND

On January 3, 2013, Plaintiffs filed a Motion to Compel Defendants to Appear for Deposition (#48). On January 15, 2013, Defendants filed a timely Response (#50) along with a request for sanctions against Plaintiffs under Rule 37(a) and 28 U.S.C. § 1927. On January 22, 2013, Plaintiffs filed a timely Reply (#51). On February 1, 2013, the Court entered an Order (#55) denying Plaintiffs' Motion to Compel (#48) and granting Defendants' request for sanctions in their Response (#50). Plaintiffs filed Objections (#58) to the Court's Order (#55) on February 7, 2013, which the District Court overruled on May 31, 2013. *See Order, Doc. #62.*

In its February 1, 2013 Order (#55), the Court instructed Defendants' counsel to file and serve a memorandum regarding attorneys' fees and costs within 14 days. The Court further advised

1 that Plaintiffs' counsel may file a response as to the reasonableness of the costs within 14 days after
 2 service of the memorandum. Defendants' counsel subsequently filed and served the instant
 3 Memorandum in Support of Award of Fees and Costs (#60) on February 14, 2013. However,
 4 Plaintiffs' counsel did not file a response.

5 DISCUSSION

6 Reasonable attorneys' fees must "be calculated according to the prevailing market rates in
 7 the relevant community," considering the fees charged by "lawyers of reasonably comparable skill,
 8 experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11, 104 S. Ct. 1541 (1984).
 9 Courts typically use a two-step process when determining fee awards. *Fischer v. SJB-P.D. Inc.*,
 10 214 F.3d 1115, 1119 (9th Cir. 2000). First, the Court must calculate the lodestar amount "by taking
 11 the number of hours reasonably expended on the litigation and multiplying it by a reasonable
 12 hourly rate." *Id.* Furthermore, other factors should be taken into consideration such as special skill,
 13 experience of counsel, and the results obtained. *Morales v. City of San Rafael*, 96 F.3d 359, 364
 14 n.9 (9th Cir. 1996). "The party seeking an award of fees should submit evidence supporting the
 15 hours worked and rates claimed," and "[w]here the documentation of hours is inadequate, the
 16 district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).
 17 Second, the Court "may adjust the lodestar, [only on rare and exceptional occasions], upward or
 18 downward using a multiplier based on factors not subsumed in the initial calculation of the
 19 lodestar." *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000).

20 Defendants' Counsel Jonathan Allan Klein submitted a Declaration (#60-1) detailing the
 21 costs incurred in responding to Plaintiffs' Motion to Compel (#48). Mr. Klein argues his
 22 reasonable hourly rate is \$320.00. The Court finds that the hourly rate of \$320.00 is commensurate
 23 with his skill, experience, and reputation. Mr. Klein further represents he spent 4.0 hours gathering
 24 necessary exhibits and drafting the statement of facts and declaration, 2.1 hours researching
 25 applicable case law, and 1.9 hours drafting the remainder of the Response (#50). The Court finds
 26 the hours claimed in preparing the Response are reasonable. Furthermore, under Local Rule 7-2(d),
 27 the failure of an opposing party to file points and authorities in response to any motion shall
 28 constitute a consent to the granting of the motion. The time to respond to the Memorandum of Fees

1 has expired, and no response has been filed. Accordingly,

2 **IT IS HEREBY ORDERED** that Plaintiffs shall pay Defendants \$2,560.00 in attorneys'
3 fees within 14 days of the date of this Order.

4 DATED this 6th day of June, 2013.

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7 GEORGE FOLEY, JR.
8 United States Magistrate Judge
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